

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1902

No. 1237.

175

No. 12, SPECIAL CALENDAR.

MIKE MONTZ, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 24, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1902.

No. 1237.

No. 12, SPECIAL CALENDAR.

MIKE MONTZ, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Information ..	1	1
Motion to quash	2	2
Bill of exceptions.....	3	2
Testimony of J. T. Leavell	3	3
Agreed statement of facts	3	3
Defendant's prayers.....	4	3
Clerk's certificate	6	4
Proceedings in police court	7	4
Writ of error	8	5

In the Court of Appeals of the District of Columbia.

MIKE MONTZ, Plaintiff in Error, }
vs. } No. 1237.
THE DISTRICT OF COLUMBIA. }

a No. 223,021.

In the Police Court of the District of Columbia, June Term, 1902.

DISTRICT OF COLUMBIA } Information for Violation
vs. } of Police Regulations.
MIKE MONTZ. }

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 Filed Jul- 1, 1902. Joseph Y. Potts, Clerk Police Court, D. C.

In the Police Court of the District of Columbia, June Term, A. D. 1902.

THE DISTRICT OF COLUMBIA, ss:

Andrew B. Duvall, Esq., city solicitor for the District of Columbia, by James L. Pugh, Jr., Esq., assistant city solicitor for the District of Columbia, who for the said District prosecutes in this behalf in his proper person, comes here into court, and causes the court to be informed and complains that Mike Montz late of the District of Columbia aforesaid, on the 21st day of June, in the year A. D. nineteen hundred and two, in the District of Columbia aforesaid, and in the city of Washington, on Pennsylvania avenue northwest, being then and there a licensed vender having a vehicle to wit: a pushcart, did with the same stop for a longer period than was necessary to make a sale not having been approached and stopped for the purpose of making a sale and did obstruct the free passage of said avenue and therewith hinder and delay the passage of other vehicles, contrary to and in violation of the police regulations of the District of Columbia, and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
City Solicitor for the District of Columbia,
By J. L. PUGH, JR.,
Assistant City Solicitor for the District of Columbia.

Personally appeared J. T. Leavell this 27th day of June, A. D. 1902, and made oath before me that the facts set forth in the fore-

going information are true, and those stated upon information received he believes to be true.

N. C. HARPER,
Deputy Clerk Police Court, D. C.

2 Filed Jul- 1, 1902. Joseph Y. Potts, Clerk Police Court, D. C.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	}	No. 223,021.
vs.		
MICHAEL MANTZ.		

Motion to Quash.

Now come the defendant by his attorneys, and moves the court to quash the information filed in the above cause for the following reasons:

1. That said police regulations of the Commissioners of the District of Columbia, under which said information is filed, is null and void, because the same is not authorized by any laws in force in the District of Columbia.

2. That said police regulations of the Commissioners of the District of Columbia, under which said information is filed, is unconstitutional, null and void.

3. That said police regulations of the Commissioners of the District of Columbia, under which said information is filed, is null and void, because the same creates a preference to certain persons to use the streets of the city of Washington, which said preference is unconstitutional, null and void.

4. That said police regulations of the Commissioners of the District of Columbia, under which said information is filed, is null and void because the same is vague and uncertain.

5. That said police regulations of the Commissioners of the District of Columbia, under which said information is drawn, are unusual, unreasonable, unjust and oppressive and deprives the defendant of the equal protection of the law.

JESSE E. POTBURY,
W. H. SHOLES,
Attorneys for the Defendant, Michael Mantz.

3 Filed Jul- 3, 1902. Joseph Y. Potts, Clerk Police Court, D. C.

Bill of Exceptions.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	}	No. 223,021.
vs.		
MIKE MONTZ.		

This cause coming on for hearing, and after hearing the motion to quash the information filed in the above-entitled cause, which

said motion is made a part of this bill of exceptions, the court overruled the said motion, and the counsel for the defendant then and there noted an exception to the ruling of the court and gave notice, as required by law, of his intention to sue out a writ of error and take the case to the Court of Appeals.

Thereupon the defendant pleaded "not guilty," and the District, in order to prove the issues on its part joined produced as a witness Police Officer J. T. LEAVELL, who, being duly sworn testified as follows:

Agreed Statement of Facts.

That the defendant, who is a licensed vendor, stopped with his push-cart of bananas on the south side of Pennsylvania avenue, near the curb line, between 7th street and Louisiana avenue, on June 21st, 1902, for a longer period than was necessary to make a sale, not having been approached or stopped for that purpose, although he made several sales before moving on; that there was no obstruction of the free passage of said avenue other than the fact of the push-cart stopping longer than was necessary to make a sale, and that the push-cart did not hinder and delay the passage of other vehicles beyond the fact that it stopped near the curb longer than necessary to make a sale, as there was ample room to pass the
4 said cart on said avenue.

And thereupon the defendant, through his attorneys, moved the court to instruct itself as matter of law that the defendant is not guilty of the charge contained in the information; but the court refused to make said ruling, to which refusal the defendant, by his counsel, then and there duly excepted.

And thereupon the defendant, through his counsel, moved the court to instruct itself as matter of law that that portion of the police regulations of the Commissioners of the District of Columbia, *i. e.*, section 1, of article 3, providing that no licensed vendor shall occupy a stand, that is, stop upon any street or avenue in the city of Washington "for a longer period than may be necessary to make a sale, after having been approached or stopped for that purpose," with the violation of which the defendant is charged in this case is unreasonable, unjust, unconstitutional, null and void, and the defendant should be acquitted; but the court refused to make said ruling, to which refusal the defendant, by his counsel, then and there duly excepted.

And thereupon the defendant, through his counsel, moved the court to instruct itself as matter of law that the mere stopping by the defendant with his push-cart on Pennsylvania avenue, northwest, for a longer period than was necessary to make a sale without any testimony tending to show that his act of stopping did obstruct the free passage of said avenue or did hinder or delay the free passage of other vehicles would not render the defendant guilty of the charge contained in the information; but the court refused to make said ruling, to which refusal the defendant, through his counsel, then and there excepted.

5 And thereupon the defendant, by his counsel, moved the court to instruct itself as matter of law that the mere stopping of the defendant with his push-cart in Pennsylvania avenue, although not approached or stopped for the purpose of making a sale, without any testimony tending to show that his act of stopping did actually obstruct the free passage of Pennsylvania avenue, northwest, would not render the defendant guilty, and the defendant should be acquitted; but the court refused to make said ruling, to which refusal the defendant, by his counsel, then and there excepted.

All of which exceptions were duly noted by the court at the trial and are signed by the presiding justice of said court this 3d day of July, A. D. 1902, *nunc pro tunc*.

(Signed)

CHARLES F. SCOTT,
Presiding Justice.

6 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, Joseph Y. Potts clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 5 inclusive, to be true copies of originals in cause No. 223021 wherein The District of Columbia is plaintiff and Mike Mantz defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 24th day — July, A. D. 1902.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

7

Transcript of Record.

In the Police Court of the District of Columbia, June Term, 1902.

DISTRICT OF COLUMBIA }
vs. } No. 223,021. Information for Violation
MIKE MONTZ. } of Police Regulations.

Tuesday, July 1st, 1902.—Motion to quash filed. Motion argued and overruled. Defendant arraigned. Plea: Not guilty. Judgment: Guilty. Exceptions taken to the rulings of the court on matters of law and notice given in open court by the defendant of his intention to apply to a justice of the Court of Appeals, D. C., for a writ of error. Continued to July 3rd, 1902.

July 3, 1902.—Sentence: To pay a fine of ten dollars, and, in default, to be committed to the workhouse for the term of thirty days.

Bills of exception filed, settled and signed.

Recognizance in the sum of one hundred dollars entered into on

writ of error to the Court of Appeals, D. C., upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Reuben M. Harlow, surety.

July 24, 1902.—I hereby certify, under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in said court in the above-entitled case.

[Seal Police Court of District of Columbia.]

N. C. HARPER,
Deputy Clerk Police Court, D. C.

8 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable Charles F. Scott, judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Mike Montz, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 11th day of July, in the year of our Lord one thousand nine hundred and two.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

RICHARD H. ALVEY,
*Chief Justice of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: Police court, District of Columbia. No. 1237. Mike Montz, plaintiff in error, vs. The District of Columbia. Court of Appeals, District of Columbia. Filed Jul- 24, 1902. Robert Willett, clerk.